IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A. O. NO. 1019 OF 2005

Mr. Abdul Sakir Siddique ... Appellant
VS.
Municipal Corporation of Gr. Bombay ... Respondent

Mr. Dakhephalkar with
Ms. Geta Shastry for appellant
Ms. Geeta Joglekar for BMC.

CORAM: D. G. KARNIK **J.**

DATE: November 22, 2006

P.C.:

1. Heard learned counsel for the parties.

2. This appeal is directed against the order dated 15th October 2005 passed by the City Civil Court , Mumbai dismissing appellants motion for injunction.

3. The respondent No. 2 issued a notice under section 351 of the Mumbai Municipal Corporation Act (for short the MMC Act) calling upon the appellant to show cause why the illegal construction made by him covering the terrace be not demolished. After considering the reply of the appellant the respondent came to the conclusion that the structure was

unauthorized and accordingly passed an order of demolition. That decision was challenged by the appellant by filing a suit in the City Civil Court. The application made by the appellant for temporary injunction pending decision of the suit was rejected by the City Civil Court by order dated 15th October 2005. That order is impugned in this appeal.

4. Learned counsel for the appellant submitted that the suit structure was in erected prior to the year 1962 and as per the Government policy the unauthorized structures erected prior to the datum line i.e. 1st January 1962 were protected and hence the suit structure was not liable to be demolished by the respondent. Learned counsel for the appellant submitted that the suit premises were let out by the then landlord K. G.Gupta to one Bashir Ahmed under a tenancy agreement dated 20th November 2968 which recorded the existence of the covered terrace. Original agreement was produced before the court. He therefore contended that the appellant had prima facie proved the existence of the covered terrace atleast since 20th November 1968. The trial court has wrongly held, submitted counsel, that the agreement of tenancy is not proved to be genuine and did not inspire confidence. He firstly submitted that the document was 30 years old and was coming from proper custody and therefore it required no proof. Secondly he submitted that assuming that the same required proof it would be at the time of trial

and therefore the trial court ought to have relied upon the documents.

5. Though the document is 30 years old the appellant is not a party to the document. The tenancy agreement is between Kishanchand P. Gupta, the then landlord and Bashir Ahmed, the alleged previous tenant. The document would therefore ordinarily be entrusted with Bashir Ahmed and / or Mr. Gupta. The document therefore cannot be said to be coming from the proper custody and hence the presumption of 30 years old document does not apply.

6. The appellant had also produced on record another tenancy agreement of Bastimal Punnalall Estates dated 3rd March 1992. It is also purportedly signed by Mr. Gupta . The trial court compared the signature thereon and found it to be different from the signature on earlier document. The trial court therefore came to the conclusion that the said document was not genuine as the signature was different. The original documents were tendered for my inspection and I have compared the signatures. The signatures are totally different. It cannot be said to be difference on account of passage of time and there is no similarity between the two signatures at all. The signature on the agreement dated 20th September 1958 is as “Kishanchand Gupta” while the signature on the second document is not decipherable at all

and is totally different. Thus the trial judge was right in holding that the signatures were different. The agreement dated 20th September 1958 does not inspire confidence.

7. No other argument was advanced before me to show that the suit structure was in existence prior to the year 1962. I see no error in the order of the trial court. The appeal is accordingly dismissed summarily.

At the request of Mr. Dakhephalkar, learned counsel for the appellant ad interim relief previously granted by this court shall remain in force for 4 weeks.

(D.G. KARNIK J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil application no. 1178 of 2005
in
A. O. NO. 1019 OF 2005

Mr. Abdul Sakir Siddique ... Appellant
VS.
Municipal Corporation of Gr. Bombay ... Respondent

Mr. Dakhephalkar with
Ms. Geta Shastry for appellant
Ms. Geeta Joglekar for BMC.

CORAM: D. G. KARNIK **J.**

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In view of the disposal of the appeal this civil application does not survive and is disposed of.

(D.G. KARNIK J.)